FILED
MAR 25 1981
ALEXANDER L. STEVAS
CLERK

No. 80-1444

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1981

RAYMOND KLUMPP

Petitioner

versus

COLONIAL PIPELINE COMPANY AND FORD, BACON & DAVIS CONSTRUCTION CORPORATION

Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

On December 4, 1975, Colonial Pipeline Company (hereinafter, "Colonial") entered into a written "Right of Way Agreement" with the heirs of the estate of Armentine Aguillard Klumpp, represented by Raymond J. Klumpp, for the granting of a pipeline servitude or right-of-way across certain property owned by the Klumpp family for the purpose of laying, constructing, maintaining and operating a forty-inch (40") pipeline.

The right-of-way agreement entered into between the Klumpps and Colonial permitted Colonial to lay a forty-inch

(40") pipeline within an existing fifty-foot (50') permanent servitude and granted additional temporary workspace for use during construction of the line. The right-of-way agreement also contained certain restrictions and imposed certain obligations on Colonial during construction of the pipeline.

Ford, Bacon & Davis Construction Corporation, Colonial's independent contractor, entered the Klumpp property on August 4, 1976, for the purpose of construction of the pipeline and left the property on November 1, 1976, after completion of operations.

On March 15, 1977, Raymond Klumpp filed suit, individually and on behalf of the co-owners of the property, against Colonial and Ford, Bacon & Davis alleging that Colonial had failed to comply with certain provisions of the right-of-way contract, thereby entitling the Klumpps to certain damages which they allege were specified under the contract.

After trial on the merits, judgment was rendered by the 15th Judicial District Court for the Parish of Acadia, State of Louisiana (the trial court), in favor of Raymond Klumpp and against defendants, Colonial and Ford, Bacon & Davis. The judgment of the trial court was suspensively appealed by Colonial and on September 24, 1980, the Louisiana Court of Appeal, Third Circuit, rendered an opinion affirming in part, reversing in part and amending the judgment of the trial court.

Raymond Klumpp then petitioned the Louisiana Supreme Court for a Writ of Certiorari to review the decision of the Court of Appeal, which request was denied by the Louisiana Supreme Court on November 26, 1980.

OBJECTION TO JURISDICTION

There is no basis for jurisdiction in this case. The Petition for Writ of Certiorari filed by Petitioner fails to enunciate

any basis for this Court's exercise of its certiorari jurisdiction under 28 U.S.C. Section 1257(3).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Respondent relies on the following Constitutional Provisions, statutes and rules, which are set out verbatim in the Appendix to this brief:

United States Constitution, Article I, Section 8, clause 3.

28 U.S.C. Section 1257(3).

United States Supreme Court Rule 17, 28 U.S.C.

QUESTIONS PRESENTED

Respondent disagrees with the "Questions Presented" as set forth in Petitioner's brief. The question properly presented is whether this case presents a dispute which is properly the subject of the Supreme Court's certiorari jurisdiction under 28 U.S.C. Section 1257(3).

SUMMARY OF ARGUMENT

1. This case involves a contract dispute between the parties arising under state law.
2. No federal question is stated by the Petition for Writ of Certiorari, nor has a federal question ever been raised by Petitioner during the pendency of this litigation.
3. The issues presented in this litigation involve questions of contract interpretation arising exclusively under the laws of the State of Louisiana.
4. Neither 28 U.S.C. Section 1257(3) nor Rule 17 of the Rules of the Supreme Court, provide any basis for the exercise by this Court of its certiorari jurisdiction in this litigation which involves only questions of state law.

ARGUMENT

The Petition for Writ of Certiorari filed by the Petitioner in this matter sets forth the following as "Questions Presented":

"I.

"Whether the State Courts of Appeal are the proper forum for a decision involving the delicate balancing required to resolve an issue of national importance, such as the relative rights and duties of the agricultural producer and the interstate pipeline company in an agreement for the transmission of energy resources across agricultural land.

"II.

"Whether the basic conflict of interests between the farmer and the interstate transmission of energy by subsurface pipeline is subject to the jurisdiction of the Supreme Court pursuant to Article 1, Section 8, clause 3 of the United States Constitution; the Commerce Power."

The Petition for Writ of Certiorari filed in this matter does not enunciate a federal question upon which to base jurisdiction in this Court. The petition merely makes a sweeping statement that the dispute between the parties involves "an issue of national importance." The fact that issues involved in lawsuits may be of "national importance" does not serve as a basis for this Court to exercise its certiorari jurisdiction. Many issues of "national importance" are presented in litigation involving only questions of state law which are properly the province of state courts.

In addition, the Petitioner seems to suggest that the mere fact that interstate commerce may be indirectly involved in this case is sufficient to confer certiorari jurisdiction on this Court. That the interstate transmission of energy products is

within the commerce power of Congress has no relevance to the issues presented in the instant case. Article 1, Section 8, clause 3 of the United States Constitution merely grants to *Congress* the power to regulate interstate commerce; it does not confer jurisdiction on the Supreme Court in all cases involving interstate commerce as Petitioner suggests.

The only claims which have ever been raised by the Petitioner throughout this litigation have been based on state contract law. No federal question has ever been raised, whether founded on the United States Constitution, federal statutes, treaties, regulations or federal common law.

The cases cited by the Petitioner to support the claim of jurisdiction are not applicable to this case. Each of the cases cited by Petitioner involve situations in which either the validity of a federal statute was questioned as being outside Congress' power to regulate interstate commerce under the Commerce Clause[1], or a state statute was questioned as an unconstitutional burden on interstate commerce.[2]

The Supreme Court's certiorari jurisdiction is set forth in 28 U.S.C. Section 1257(3) which provides in pertinent part:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * *
>
> "(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in

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1. E.g., **Perez vs. United States, 402 U.S. 146, 91 S.Ct. 1357, 28 L.Ed.2d 686 (1971); United States vs. Ohio Oil Company, 234 U.S. 548, 34 S.Ct. 956, 58 L.Ed. 1459 (1914).**

2. E.g., **The Great Atlantic and Pacific Tea Company, Inc. vs. Cottrell, 424 U.S. 366, 96 S.Ct. 923, 47 L.Ed.2d 55 (1976); Panhandel Eastern Pipe Line Company vs. Public Service Commission of Indiana, 332 U.S. 507, 68 S.Ct. 190, 92 L.Ed. 128 (1947); Eureka Pipe Line Company vs. Hallanan, 257 U.S. 265, 42 S.Ct. 101, 66 L.Ed. 227 (1921).**

> question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

This case does not present any of the categories enumerated in 28 U.S.C. Section 1257(3). The validity of a statute of the United States is not drawn in question; the validity of a state statute is not drawn in question on the grounds of its being repugnant to the Constitution or laws of the United States; nor is any title, right or privilege specially set up or claimed under the Constitution, treaties or laws of the United States.

The Petitioner's own argument makes it clear that the decisions of the state courts in this matter were based on the rules of contract construction under the Louisiana law. There is no jurisdiction in the Supreme Court to review cases which involve only questions of state law. See *Black vs. Cutter Laboratories*, 351 U.S. 292, 76 S.Ct. 824, 100 L.Ed. 1188 (1956); *Memphis Natural Gas Company vs. Beeler*, 315 U.S. 649, 62 S.Ct. 857, 86 L.Ed. 1090 (1942).

The fact that a state court may have rendered an erroneous decision on a question of state law does not give rise to jurisdiction in this Court. Courts of a state have the supreme power to interpret the laws of that state. The Supreme Court's certiorari jurisdiction is limited to decisions of state courts on federal questions. See *Brinkerhoff-Faris Trust and Savings Co. vs. Hill*, 281 U.S. 673, 50 S.Ct. 451, 74 L.Ed. 1107 (1930).

CONCLUSION

The instant case does not present a federal question upon which to base this Court's certiorari jurisdiction. The only issues presented in this case are questions of state law which are totally within the province of state courts. Therefore, this Court is without jurisdiction to review this matter.

Respectfully submitted,

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CERTIFICATE

I hereby certify that three (3) printed copies of the above and foregoing Opposition to Petition for Writ of Certiorari have this day been served an opposing counsel of record, John J. Cummings, III, CUMMINGS & GAMBEL, 416 Gravier Street, 200 Alison House, New Orleans, Louisiana 70130, by depositing same in the United States mail, postage prepaid.

Baton Rouge, Louisiana, this 24 day of March, 1981.

R. GORDON KEAN, JR.

AFFIDAVIT OF MAILING

I, R. GORDON KEAN, JR., attorney of record for Respondent, COLONIAL PIPELINE COMPANY, a member of the Bar of this Court, do hereby certify that the foregoing Opposition to Petition for Writ of Certiorari was deposited in a United States post office, with first-class postage prepaid, addressed to the Clerk of this Court, on 24 day of March, 1981, and to my knowledge the mailing took place within the time permitted under the United States Supreme Court Rules.

R. GORDON KEAN, JR.

SWORN TO AND SUBSCRIBED before me at Baton Rouge, Louisiana on this 24 day of March, 1981.

LEONARD L. KILGORE, III, Notary Public

APPENDIX

U.S. Constitution, Article I, Section 8:

"The Congress shall have Power . . .

* * *

"To regulate Commerce . . . among the several States . . .;"

28 U.S.C. Section 1257:

"Section 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

"(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

"(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

"For the purposes of this section, the term 'highest court of a State' includes the District of Columbia Court of Appeals."

U.S. Supreme Court Rule 17, 28 U.S.C.:

"1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

> "(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> "(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.
>
> "(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

"2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, and of any other courts whose judgments are reviewable by law on writ of certiorari."